

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

WU-HSIUNG SU, M.D.  
1228 N Street, No. 28  
Sacramento, California 95814

Physician's and Surgeon's Certificate  
No. A33249,

Respondent.

No. 16-91-14733

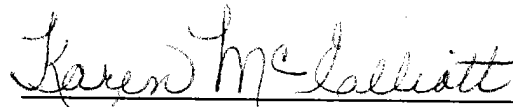
OAH No. N-9504126

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on January 10, 1996.

IT IS SO ORDERED December 11, 1995.



KAREN MCELLOTT, CHAIR, PANEL B  
DIVISION OF MEDICAL QUALITY

Complainant, Dixon Arnett, as Executive Director of the Medical Board of California (hereinafter "the Board"), brought the Accusation on March 29, 1995, in his official capacity.

## II

On November 29, 1978, Respondent was issued Physician's and Surgeon's Certificate No. A33249 by the Board.

- A. Respondent's certificate expired on December 31, 1989.
- B. Respondent's expired certificate (Finding No. II.A) was renewed by the Board on January 29, 1994.
- C. Respondent's certificate is in full force and effect.

### Factual Findings

## III

At all times relevant, Respondent was licensed to practice medicine by the Board of Medical Licensure and Discipline, State of Rhode Island.

## IV

On September 30, 1994, Respondent's license in the State of Rhode Island (Finding No. III) was disciplined by the Board of Medical Licensure and Discipline in a matter entitled In the Matter of: Wu-Hsiung Su, M.D., No. C91-045, for unprofessional conduct in the practice of medicine. The discipline imposed by the Board in Rhode Island included, inter alia:

A. That Respondent be suspended from the practice of medicine until such time as he can establish to the satisfaction of the Board that he has:

1. satisfactorily completed an educational course in adult metabolic and endocrine diseases,
2. satisfactorily completed a course in medical records, including documentation of patient histories, symptoms and/or complaints and treatments undertaken, and
3. satisfactorily completed a course in the management of obesity.

B. That Respondent pay an administrative fine of five thousand dollars (\$5,000.00).

The facts and circumstances giving rise to the discipline referenced in Finding No. IV are:

A. Patient, responding to a newspaper solicitation for Respondent's weight loss program, was treated by Respondent from January 1989 through November 1989.

B. Respondent treated patient with pharmaceuticals, to wit: Melfiat (an appetite suppressant), hydrochlorothiazide (HCTZ) (a diuretic) and vitamin B-12 at various times during the period of treatment referenced in Finding No. V.A.<sup>1</sup>

C. In February 1985, patient complained of itchiness and sores on her scalp. Respondent attributed the complaints to ticks on family pets. Respondent prescribed a treatment shampoo. The condition persisted and was left untreated by Respondent. Patient further complained of frequent urination and excessive thirst. Respondent, attributing these complaints to HCTZ, did nothing to alleviate patient's symptoms. Respondent failed to record her complaints of frequent urination and excessive thirst.<sup>2</sup>

D. Respondent, having conducted at least three (3) blood tests on patient, never discussed the results of the tests with her. At no time did Respondent order a urine test.

E. On November 18, 1989, patient admitted herself to a hospital complaining of excessive thirst, frequent urination and fatigue; and was subsequently diagnosed, at the hospital, with Diabetes Mellitus.

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<sup>1</sup>A supervised weight control program must include diet, exercise and patient counseling. Pharmaceuticals must be used only as an adjunct; Melfiat, if used, should be limited to a few weeks; while HCTZ and vitamin B-12 are not medically justified as primary modes of reducing weight. Respondent's treatment did not comport with standards of care for a weight loss program.

<sup>2</sup>Respondent ignored patient's complaints and failed to recognize at an early stage of treatment her symptoms for Diabetes Mellitus evaluation.

## VI

On February 13, 1991, Respondent's license in the State of Rhode Island (Finding No. III) was disciplined by the Board of Medical Licensure and Discipline in a matter entitled State of Rhode Island, etc. v. Wu-Hsiung Su, M.D., No. C90-063, for unprofessional conduct in the practice of medicine. The discipline imposed by the Board in Rhode Island included, inter alia:

- A. A reprimand.
- B. Completion of no less than ten hours of academic classroom or clinical study in neurological evaluation at a school of medicine approved by the American Medical Association or a duly approved continuing medical education program.
- C. That Respondent pay administrative costs of one thousand dollars (\$1,000.00).

## VII

The facts and circumstances giving rise to the discipline referenced in Finding No. VI are:

- A. On November 18, 1982, a thirty-three year old male patient was seen by Respondent for complaints of back pain.
- B. Respondent prescribed Parafon Forte, advised the use of a warm pack, and advised the patient to call his office in three or four days if the pain persisted.
- C. On November 21, 1982, the patient, without having called Respondent's office, presented himself at a hospital emergency room. Examined, X-rays were taken and the patient was advised to see his physician for follow-up care. Patient did not contact Respondent.
- D. On November 26, 1982, the patient again presented himself to a hospital emergency room for complaints of continued back pain, weakness in and inability to move his lower extremities and urinary retention. He was admitted to the hospital and examined by Respondent. Respondent's first impression was spinal cord compression. Respondent ordered a consult with an orthopedic physician.

E. On the weekend of November 27 and 28, 1982, Respondent saw his patient and noted that he failed to urinate, required urinary catheterization and had developed a fever.

F. On November 29, 1982, the orthopedic surgeon saw the patient for the first time. A neurological consultation was ordered. The neurologist obtained an emergency myelogram and neurosurgical consult. The myelogram revealed a total blockage at the third lumbar disk space.

G. On November 30, 1982, the patient underwent surgery for spinal cord compression. He suffered permanent neurological damage.

H. Respondent failed to obtain a timely consultation and to recognize the severity of his patient's medical problems.

#### Circumstances in Aggravation

##### VIII

Respondent has a prior record of discipline of involving multiple acts of unprofessional conduct (Finding Nos. IV - VII) in the practice of medicine.

##### IX

Respondent's discipline as set forth in Finding No. IV occurred less than two years ago.

#### Circumstances in Mitigation

##### X

Respondent is partially rehabilitated.<sup>3</sup>

##### XI

Respondent has completed all the terms and conditions of discipline set forth in Finding No. IV.

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<sup>3</sup>Respondent, prior to receiving the discipline set forth in Finding No. IV, moved and commenced practice in California in 1993. Although he offered evidence of his reputation as an excellent practitioner, the limited length of time, peer review and supervision, since his arrival in California, is insufficient to persuade the Administrative Law Judge of his full rehabilitation.

## Costs Findings

### XII

Although pled in the Accusation, no evidence related to the costs and fees paid and incurred by the Board in the investigation and prosecution of this matter was presented.

\* \* \* \* \*

## DETERMINATION OF ISSUES

### I

Cause exists to revoke or suspend the certificate of Respondent as a physician and surgeon for discipline imposed by another state pursuant to the provisions of Business and Professions Code section 2305 as set forth in Finding Nos. IV and VI.

### II

Cause does not exist to direct Respondent to pay costs in the investigation, prosecution or enforcement of this matter pursuant to Business and Professions Code section 125.3 as set forth in Finding No. XII.

### III

The objective of this proceeding is to protect the public, the medical profession, maintain professional integrity, its high standards, and preserve public confidence in the medical profession and its particular physicians and surgeons. These proceedings are not for the primary purpose of punishing an individual, particularly Respondent. Camacho v. Youde (1979) 95 Cal.App.3d 161, 165.

Licensure by the Board is not readily granted. Qualification for licensure must be met (Business and Professions Code section 2080, et seq.) and minimum standards continuously maintained (Business and Professions Code section 2190, et seq.). The effect of state licensure is to assure the public that the person holding the license is not only qualified but also maintaining the standards required to further the state's constitutional interest in public health, safety, morals and welfare. This, admittedly, places a burden not merely on the state but also upon the licensee to responsibly conduct all affairs associated with licensure. In this regard, it is the licensee who in the responsible conduct of licensed activities furthers public confidence in Board licensure.

Respondent contends that the imposition of any discipline is unwarranted and would fiscally impact Respondent. The financial impact of discipline on a respondent is not a consideration for proper determination (cf. Drociak v. State Bar (1991) 52 Cal.3d 1085, 1090). Further, the evidence (Finding No. X) does not establish such rehabilitation as to preclude the imposition of discipline.

Respondent, notwithstanding his subsequent efforts at complying with the discipline imposed by Rhode Island (Finding No. XI), has a record of multiple acts of unprofessional conduct (Finding Nos. IV - VIII), including discipline as recently as 1994 (Finding No. IV and IX) reflecting on his knowledge and ability.<sup>4</sup>

The key concern in arriving at a disciplinary recommendation is the degree to which the public needs protection from Respondent. Mephram v. State Bar (1986) 42 Cal.3d 943, 948; In the Matter of Rodriguez (1993) 2 Cal. State Bar Ct. Rptr. 480, 501.

In determining the appropriate degree of discipline to recommend, the Board's disciplinary standards serve as guidelines. (Cf. In the Matter of Taylor (1991) 1 Cal. State Bar Ct. Rptr. 563, 580; In re Young (1989) 49 Cal.3d 257, 267, fn. 1). The Board, in the promulgation of disciplinary guidelines, has recommended an election between the maximum penalty of revocation or a minimum penalty reflecting discipline for a similar offense in California for the professional misconduct referenced in Finding Nos. IV and VI pursuant to Business and Professions Code sections 2234(b) (Gross Negligence), 2234(c) (Repeated Negligent Acts), or 2234(d) (Incompetence). The minimum penalty for such violations would include, inter alia, an examination and an education course.

Complainant's counsel, to his credit, does not contend that revocation of Respondent's certificate is warranted, despite his history of unprofessional conduct (Finding Nos. IV - VIII).

Accordingly, giving due consideration to the facts and circumstances underlying the Accusation (Finding Nos. III - IX) and the circumstances in mitigation and rehabilitation (Finding Nos. X - XI), the public interest will not be adversely affected by the continued issuance of a properly conditioned license to Respondent.

\* \* \* \* \*

#### ORDER

Certificate No. A33249 issued to Respondent Wu-Hsiung Su, M.D., is revoked pursuant to Determination of Issues Nos. I and III; provided, however, said revocation is stayed and Respondent

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<sup>4</sup>See footnote 3.



placed on probation for five years upon the following terms and conditions:

#### I

Within 15 days of the effective date of this Decision, Respondent shall provide the Division of Medical Quality, or its designee, proof of service that Respondent has served a true copy of this Decision on the Chief of Staff or the Chief Executive Officer at every hospital or medical group where privileges or membership extended to Respondent or where Respondent is employed to practice medicine and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to Respondent.

#### II

Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by him during probation, showing all the following:

- A. The name and address of each patient.
- B. The date.
- C. The character and quantity of controlled substances involved.
- D. The indications and diagnoses for which the controlled substances were furnished.

#### III

Within 90 days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Division of Medical Quality or its designee for its prior approval an educational program or course to be designated by the Division which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Medical Education requirements for re-licensure. Following the completion of each course, the Division or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of continuing medical education of which 40 hours were in satisfaction of this condition and were approved in advance by the Division or its designee.

#### IV

Within 60 days of the effective date of this Decision, Respondent shall enroll in a course in Ethics approved in advance by the Division of Medical Quality or its designee and shall

successfully complete the course during the first year of probation.

#### V

Respondent, at his expense, shall take and pass an oral clinical examination in a subject to be designated and administered by the Division of Medical Quality or its designee. This examination shall be taken within 90 days of the effective date of this Decision. If Respondent fails the first examination, Respondent shall be allowed to take and pass a second examination, which may consist of a written as well as oral examination. The waiting period between the first and second examinations shall be at least three months. If Respondent fails to pass the first and second examinations, Respondent may take a third and final examination after waiting a period of one year. Failure to pass the oral clinical examination within 18 months after the effective date of this Decision shall constitute a violation of probation. If Respondent fails to pass the first examination, Respondent shall be suspended from the practice of medicine until a repeat examination has been successfully passed, as evidenced by written notice to Respondent from the Division of Medical Quality or its designee.

#### VI

Within 30 days of the effective date of this Decision, Respondent shall submit to the Division of Medical Quality for its prior approval a plan of practice in which Respondent's practice shall be monitored by another physician in Respondent's field of practice, who shall provide periodic reports to the Division. If the monitor resigns or is no longer available, Respondent shall, within 15 days, move to have a new monitor appointed, through nomination by Respondent and approval of the Division. Respondent is prohibited, during the period of probation, from engaging in solo practice.

#### VII

Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

#### IX

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division of Medical Quality, stating whether there has been compliance with all the conditions of probation.

X

Respondent shall comply with the Division of Medical Quality's probation surveillance program. Respondent shall, at all times, keep the Division informed of his addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record.

XI

Respondent shall appear in person for interviews with the Division of Medical Quality, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

XII

In the event Respondent should leave California to reside or to practice outside the State or for any reason should Respondent stop practicing medicine in California, Respondent shall notify the Division of Medical Quality or its designee in writing within 10 days of the date(s) of departure and return or the date(s) of non-practice within California. Non-practice is defined as any period of time exceeding 30 days in which Respondent is not engaged in any activities defined in Sections 2051 and 2052 of the Business and Professions Code. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.

XIII

Upon successful completion of probation, Respondent's certificate will be fully restored.

XIV

If Respondent violates probation in any respect, the Division of Medical Quality, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against Respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

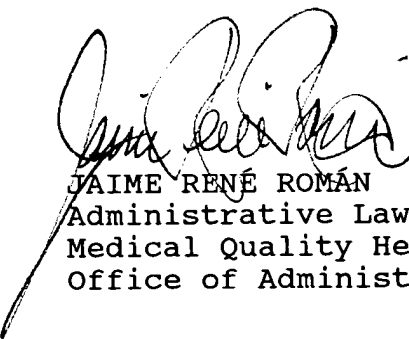
XV

During the period of probation, Respondent is prohibited from supervising physician assistants.

XVI

Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may voluntarily tender his certificate to the Board. The Division of Medical Quality shall exercise its right to evaluate Respondent's request and to exercise its discretion whether to grant the request or take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered certificate, Respondent shall no longer be subject to the terms and conditions of probation.

Dated: November 9, 1995



JAIME RENÉ ROMÁN  
Administrative Law Judge  
Medical Quality Hearing Panel  
Office of Administrative Hearings

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 JANA L. TUTON  
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P. O. Box 944255  
5 Sacramento, California 94244-2550  
Telephone: (916) 324-7861  
6  
7 Attorneys for Complainant  
8  
9

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
10 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation	)	NO. 16-91-14733
Against:	)	
13	)	
WU-HSIUNG SU, M.D.	)	<u>ACCUSATION</u>
14 1228 N Street, #28	)	
Sacramento, California 95814	)	
15 California Physician and	)	
Surgeon Certificate	)	
16 No. A33249	)	
	)	
17 Respondent.	)	
	)	

18  
19 Dixon Arnett, for causes for discipline, alleges:  
20

21 1. Complainant Dixon Arnett makes and files this  
22 accusation in his official capacity as Executive Director of the  
23 Medical Board of California (hereinafter referred to as the  
24 "Board").  
25

26 2. On November 29, 1978, the Medical Board of  
27 California issued physician and surgeon certificate number A33249

1 to Wu-Hsiung Su, M.D. The certificate expired December 31, 1989.  
2 The certificate was renewed on January 29, 1994, and will expire  
3 December 31, 1995, unless renewed.

4

5 3. Under Business and Professions Code section 2234,  
6 the Division of Medical Quality shall take action against any  
7 licensee who is charged with unprofessional conduct.

8 Under Business and Professions Code section 2305, the  
9 revocation, suspension, or other discipline by another state of a  
10 license or certificate to practice medicine issued by the state  
11 shall constitute unprofessional conduct against such licensee in  
12 this state.

13 Under Business and Professions Code section 118(b), the  
14 expiration of a license shall not deprive the Board of  
15 jurisdiction to proceed with a disciplinary action during the  
16 time within which the license may be renewed, restored, or  
17 reinstated.

18 Under Business and Professions Code section 2428, a  
19 license which has expired may be renewed any time within five  
20 years after expiration.

21 Under Business and Professions Code section 125.3, the  
22 Medical Board of California may request the administrative law  
23 judge to direct a licentiate found to have committed a violation  
24 or violations of the licensing act to pay a sum not to exceed the  
25 reasonable costs of the investigation and enforcement of the  
26 case.

27 //

1           4. Respondent has subjected his physician's and  
2 surgeon's certificate to discipline under Business and  
3 Professions Code section 2305 on the grounds of unprofessional  
4 conduct in that on September 30, 1994, the State of Rhode Island  
5 imposed discipline on respondent's license to practice medicine  
6 in that state for unprofessional conduct in the treatment of a  
7 patient for weight loss. The license was suspended until  
8 respondent has satisfactorily completed an educational course in  
9 metabolic and endocrine diseases, completed a course in medical  
10 records including documentation of patient histories, symptoms  
11 and/or complaints and treatments undertaken, completed a course  
12 in management of obesity and paid a fine of \$5,000. Attached as  
13 Exhibit A and incorporated by reference is a true and correct  
14 copy of the Order from the State of Rhode Island.

15  
16           5. Respondent has subjected his physician's and  
17 surgeon's certificate to discipline under Business and  
18 Professions Code section 2305 on the grounds of unprofessional  
19 conduct in that on February 13, 1991, discipline was imposed on  
20 respondent's license to practice medicine in the State of Rhode  
21 Island for failing to recognize the severity of a patient's  
22 medical problems. Respondent accepted a reprimand. Respondent  
23 was ordered to complete no less than ten (10) hours of academic  
24 classroom or clinical study in neurological evaluation within one  
25 year of the order and pay a \$1,000 fine.

26 //

27 //

1           WHEREFORE, complainant prays a hearing be had and that  
2 the Medical Board of California make its order:

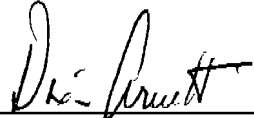
3           1. Revoking or suspending physician's and surgeon's  
4 certificate number A33249, issued to Wu-Hsiung Su, M.D.

5           2. Prohibiting Wu-Hsiung Su, M.D. from supervising  
6 physician assistants.

7           3. Ordering Wu-Hsiung Su, M.D., to pay to the Medical  
8 Board of California its costs for investigation and enforcement  
9 according to proof at the hearing, pursuant to Business and  
10 Professions Code section 125.3.

11           4. Taking such other and further action as may be  
12 deemed proper and appropriate.

13           DATED: March 29, 1995

14  
15  
16             
17           DIXON ARNETT  
18           Executive Director  
19           Medical Board of California  
20           Department of Consumer Affairs  
21           State of California

22           Complainant

23  
24  
25           03573160-  
26           SA95AD0183  
27           (SM 3/13/95)



EXHIBIT A

Rec 11/10/94

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF HEALTH



11 October 1994

95R7070

John D. Crowley  
United States Department of Justice, DEA  
50 Staniford, Suite #200  
Boston, MA  
02114

Dear Mr. Crowley:

Pursuant to Section 5-37-5.2 of the General Laws of Rhode Island, as Amended, the Board of Medical Licensure and Discipline is hereby disseminating the following information regarding Wu-Hsiung Su, M.D., Rhode Island Allopathic License No. 5116.

1) That Wu-Hsiung Su, M.D. be, and hereby is, suspended from the practice of medicine until such time as he can establish to the satisfaction of the Board that he has:

- a) satisfactorily completed an educational course in metabolic and endocrine diseases that affect adults;
- b) satisfactorily completed a course in medical records, including documentation of patient histories, symptoms and/or complaints and treatments undertaken.
- c) satisfactorily completed a course in the management of obesity.

2) All of the remedial courses described above must have the prior approval of the Board of Medical Licensure and Discipline.

3) That Wu-Hsiung Su, M.D. be assessed an Administrative Fee of Five Thousand (\$5,000.00) Dollars payable within 60 Days of the date of this Order.

Sincerely,

*Milton W. Hamolsky M.D.*

Milton W. Hamolsky, M.D.  
Chief Administrative Officer  
BOARD OF MEDICAL LICENSURE AND DISCIPLINE

MWH/jcl

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
**D E P A R T M E N T O F H E A L T H**

STATE OF RHODE ISLAND AND  
PROVIDENCE PLANTATIONS,  
DEPARTMENT OF HEALTH,  
BOARD OF MEDICAL LICENSURE  
AND DISCIPLINE

NO. C91-045

In the matter of:  
WU-HSIUNG SU, M.D.

ORDER

Pursuant to a Specification of Charges of Unprofessional Conduct dated August 12, 1993, issued on behalf of the Board of Medical Licensure and Discipline by the Investigating Committee of said Board, Defendant Wu-Hsiung Su, M.D. (hereinafter referred to as "Su") was summoned to appear before the designated Hearing Committee of the Board to answer seven charges arising out of Su's care and treatment of Patient A as follows:

1) Su was charged with unprofessional conduct in the practice of medicine in violation of Section 5-37-5.1 of the General Laws of Rhode Island 1956, as amended (1987 Re-enactment) by reason of actions and conduct set forth below, to wit:

That a forty-four (44) year old woman (the patient) was under Su's care and treatment from January 1989 through November 13, 1989. Su had publicly advertised a weight loss program. This patient responded to the public advertisement, and was treated for weight loss by Su from January, 1989 through November 13, 1989.

That within that period, Su treated the patient with Melfiat, an appetite suppressant, from January 7, 1989 through October 30, 1989, with the exception of a two (2) week period, when the patient was being treated for Coryza. Su also treated the patient with Hydrochlorothiazide (HCTZ), a diuretic, from early in 1989 through April 18, 1989. From approximately April 1, 1989 through the end of her treatment, Dr. Su regularly injected the patient with Vitamin B-12.

That in February, 1989, the patient complained that she was suffering from itchiness, a burning sensation and scabbed sores of the scalp. Dr. Su prescribed a hydrocortisone cream and continued the patient on the appetite suppressant and the diuretic.

That Su ordered laboratory tests, including a blood glucose level, but the test results were not revealed to the patient, and the patient was continued in the weight loss program.

That during the course of her treatment, the patient complained that she was thirsty and had frequent urination, but her complaints were not reflected in Su's treatment notes or records.

That on November 18, 1989, the patient was admitted to a hospital by her family physician through the emergency room because of a history of excessive thirst, excessive urination, a sixteen (16) pound weight loss in two (2) months, difficulty in focusing her eyes and reported high blood sugar. The patient's blood sugar level was determined to be 588. The patient was diagnosed as having Diabetes Mellitus.

2) Su was charged with unprofessional conduct in violation of Section 5-37.5.1 (2) in that he failed to provide a well designed and strictly supervised weight loss program such as appeared in his advertisement and that said advertisement was misleading and had a tendency to deceive the public.

3) Su was charged with unprofessional conduct in violation of Section 5-37-5.1 (19) for failing to provide a well designed and strictly supervised weight loss program, in that there was no indication of the recommendation of an exercise program or specific diet with appropriate diet counseling.

4) Su was charged with unprofessional conduct in violation of Section 5-37-5.1 (19) in that he did not provide a well-designed and strictly supervised weight loss program in that his continued use of Melfiat - 105 was medically unjustified, was for an excessive period of time, and was then stopped abruptly.

5) Su was charged with unprofessional conduct in violation of Section 5-37-5.1 (19) in that he did not provide a well designed and strictly supervised weight program in that the use of hydrochlorothiazide and injectable Vitamin B-12 with respect to this particular patient was not justified on the basis of any scientific evidence of the efficacy of such treatment in weight loss programs.

6) Su was further charged with unprofessional conduct in violation of Section 5-37-5.1 (19) in that he failed to provide a well-designed and strictly supervised weight loss program, in that the use of hydrochlorothiazide and injectable B-12 were without medically scientific basis, were medically unnecessary and were medically unjustified.

7) Su was charged with unprofessional conduct in violation of Section 5-37-5.1 (19) in that a.) he failed to note certain important symptoms and complaints of the patient i.e. excessive thirst and frequent urination, in the patient's medical record, failed to advise the patient of the relevant diagnosis related to these complaints, and failed to institute the indicated therapy related to said complaints; b.) he prescribed diuretics and appetite suppressants for 10 months—and gave vitamin B-12 injections at bi-weekly to monthly intervals without any specific indication of the need for such medications; and c.) he failed to diagnose Diabetes Mellitus, failed to appraise the patient of the

diagnosis, and failed to institute indicated therapy.

This matter was set down for hearing commencing on November 3, 1993.

The three members of the hearing committee were as follows:

Barry Jasilli, Esq., Chairman

Mary B. Arnold, M.D.

Sally Jane Thibodeau, Ph.D.

Maureen A. Hobson, Esq. served as legal counsel to the hearing committee.

On behalf of the State:

Joseph G. Miller, Esq.

On behalf of Wu-Hsiung Su, M.D.:

J. Renn Olenn, Esq.

There were a number of exhibits introduced by counsel for each of the parties, and those were duly marked, entered in the record of the proceedings and reviewed by the Committee in reaching a decision. Dr. Su did not appear on his own behalf.

The State's first witness was Patient A. She is a 50 year old woman who began treatment with Su in January 1989. She consulted him pursuant to an advertisement she saw which indicated that Su's practice included a medically supervised weight loss program. Her husband was also a patient of Su at the time. She testified that on her initial visit she was asked to fill out a patient questionnaire, but had only gotten through the first page when Su came out to the reception area to get her. He took the questionnaire from her. Su asked her if she had high blood pressure, to which she responded no. He weighed her and asked her if she was taking any thyroid medication. She told him she was taking Iodine and Synthroid at the rate of one per day. At the time, she was 5 foot 3 1/2 inches tall and weighed 154 pounds. Su also asked her if she ever experienced migraine headaches, to which she responded no. In response to his inquiry, Patient A told Su that she exercised regularly. In fact on examination, Patient A testified that the only exercise she engaged in was taking a short walk at work during her lunch break. Although the questionnaire listed a host of ailments and possible medical conditions which Su had crossed out, he never asked Patient A about any of them. Su did give her a check up, including an EKG. He never asked her anything about her eating habits or calorie consumption. Patient A was in Su's office for about 15 minutes. At the end of the session, he prescribed a diuretic and an appetite suppressant which he said would last her for a two (2) week period until her next appointment. Su did not provide any weight loss counseling to Patient A, nor did they discuss a target weight loss.

At Patient A's next session with Su, he listened to her chest and lungs and tested her reflexes. There was no discussion of her diet, calorie intake or exercise program for the previous two (2) weeks or for the upcoming period. She saw Su for approximately ten (10) minutes and he gave her more prescriptions. Each visit with the doctor was billed to the patient's medical insurance carrier at \$80.00 per visit.

On Patient A's next visit, February 4, 1989, she told Su of a problem with sores on her scalp. He asked her about whether she had pets and gave her a prescription for a shampoo. He told her it looked like she might have a tick bite. On February 18, 1989, the sores were worse. Su's notes (exhibits 3A and 3B) indicate he prescribed a cortisone cream. However, Patient A said he did not prescribe any cream and although she was still complaining about the sores, he did not look at her scalp on that date. Once again, Su did not discuss diet, food, drink, calories or exercise. He did usually take her blood pressure and in February 1989 Patient A complained of excessive thirst and increased urination. Su told her it was the effects of the diuretic. He continued her on the prescriptions, and on April 1, 1989 she began getting B-12 vitamin shots. The sores on her scalp were continuing, but Patient A testified that she stopped bringing it up with Su because she was embarrassed. She believed his theory that the sores were the result of tick bites from the dogs. Patient A then testified that sometime in the "warm weather" of 1989, Su discontinued the diuretic, but kept her on the appetite suppressant. All this time, she persisted in her complaints of excessive thirst and increased urination at each visit. At no point during any of these visits was diet, exercise or weight loss discussed with Patient A.

In August of 1989, Su took another blood test, but Patient A did not get the results. Her treatment regimen remained the same throughout the summer of 1989. She was seeing Su bi-weekly.

In October, Patient A began to complain of tiredness, in addition to the thirst and urination. Su conducted another blood test at that time. Su told Patient A that the results of the blood test were normal, a little on the low side. He explained to her that he took the blood test to rule out sugar.

After the third blood test the patient became concerned. She testified that her thirst was insatiable and she was constantly urinating. Patient A contacted her family physician, Dr. Ramirez. She went to Landmark Medical Center on November 18, 1989 pursuant to Dr. Ramirez's instructions for further tests. She was hospitalized that same day and diagnosed with Diabetes Mellitus. Subsequent to her hospital stay, Patient A discontinued treatment with Su.

The State's next witness was Patient A's husband. He testified that he had been having regular bi-weekly treatments with

Su since 1987. In the Fall of 1988, his wife saw Su's advertisement for a weight loss program. The husband told his wife Su was "nice" and she should go to him. The husband accompanied Patient A on every visit she had with Su. He testified that Su's office was such that he could hear all of his wife's conversations with Su. There was never any discussion of weight loss, diet or exercise. No dietician was ever present. Other than prescriptions, Su provided nothing else to Patient A. The husband testified that almost every time his wife had an appointment with Su, she had to use his bathroom. Su said it was due to the diuretic. He was present at his wife's appointment on October 30, 1989. Patient A, on that date, told Su, again, that she was losing weight, but that she was tired all of the time, thirsty and had to urinate frequently. Su said those were symptoms of "sugar" and he would have to check it out. After that visit, Patient A consulted her family physician which resulted in Patient A's hospitalization and diabetes diagnosis. Patient A's husband continued treatment with Su after his wife's hospitalization.

Su asked him why his wife had not returned. - When informed by the husband of her diabetes, Su told the husband that the diagnosis was "odd" since "her blood sugar was high."

The State's third witness was Charles B. Kahn, M.D. Dr. Kahn is a Board Certified internist and endocrinologist. He testified that there is no such specialty, per se, as "weight loss medicine", although many doctors, including himself, practice it. Dr. Kahn testified that he was familiar with the community standards for weight loss intervention. He indicated that a properly supervised weight control program should involve 1.) examination, history and evaluation of the patient, and, 2) a nutritionally balanced written diet which includes a reduction in caloric intake. The diet should be prepared by the doctor or an affiliated dietician. The diet should be monitored by the doctor for compliance by the patient, and there should be doctor-patient discussions of the effectiveness of the diet. Dr. Kahn testified that all of the literature on the subject of weight loss suggests that diet is the cornerstone to an effective weight loss program. In addition to reducing calorie intake, a good diet program also maximizes calorie expenditure. Therefore, exercise is very important. To the extent the patient is able to participate, exercises should be employed. The doctor testified that pharmacological intervention should be the last thing considered in a weight loss program, and only as an adjunct to diet and exercise, to the extent those are unsuccessful. Medication is not normally used by doctors to reduce a patient's weight because it does not promote initiating a life style change, which is the thrust of a good weight loss program.

Dr. Kahn examined Su's records for Patient A. He could find no evidence therein to indicate that the patient had been given a diet or an exercise regimen. In his opinion, to a reasonable degree of medical certainty, Su's failure to provide the patient

with a diet and/or exercise regimen constituted a departure from recognized standards of medical practice in the area.

Dr. Kahn also addressed the specific drugs prescribed by Su. He stated that if used at all, the appetite suppressant and diuretic should have been used for a very short time, a few weeks. Su's records indicate he used drug intervention with Patient A for nine (9) to ten (10) months. There was nothing in the patient's record to warrant prolonged drug use. Dr. Kahn also testified that Su's complete failure to document complaints of the patient relative to thirst and frequent urination constituted a departure from recognized standards of medical practice. On cross-examination, Dr. Kahn admitted that there was no standard of practice which specifically required a written diet. However, with the literature he had read and the seminars he has attended, it is recommended that where diet is an issue, it should be put into written form and routinely discussed with the patient.

The defense introduced into the record the deposition testimony of George L. Blackburn, M.D. Dr. Blackburn has an M.D. and a Ph.D. in Nutrition and Bio-Chemistry. He operates an obesity laboratory and works out of Harvard University. He reviewed Su's treatment of Patient A and felt the same fell within the reasonable standards of medical care. He characterized Su's treatment of the Patient as "step down care". Dr. Blackburn stated that where the physician is providing all of the care, he need not document everything he is doing because he's doing it himself. There is no requirement for a written diet. Dr. Blackburn indicated that the doctor and patient should have ongoing discussions of diet and exercise. He stated that exercise is a necessary component about which the patient and the doctor should have dialogue. He reviewed Su's records of Patient A, and, due to the fact that she did lose weight, Dr. Blackburn concluded that Su must have provided diet and exercise counselling even though it was not documented in the patient record.

Dr. Su did not cause Patient A's diabetes, Dr. Blackburn testified. Dr. Blackburn also stated that Patient A was not seriously obese, and in those cases, pharmaceuticals are not usually utilized until diet and exercise have been tried first without success. He also noted a cautionary commentary which has been issued by the American Medical Association to the effect that anorectics should not be relied upon as a solution to weight control. They are addictive and do nothing to change a person's lifestyle.

Both the State and the Defendant presented oral closing arguments and rested.

Based upon the testimony and evidence presented, the Board made the following Findings and Conclusions:



1) That although Patient A's husband was already a patient of Su, Patient A responded to Su's newspaper advertisement which solicited patients for a weight loss program. The patient treated from January through November, 1989.

2) From inception of her treatment, Su treated the patient with pharmaceuticals, to wit: Melfiat (an appetite suppressant); hydrochlorothiazide (HCTZ) (a diuretic) and vitamin B-12 at various times throughout her period of treatment. Most notable, Melfiat was prescribed from January, 1989 through October, 1989.

3) In February 1989 the patient complained of itchiness and sores on her scalp. Su attributed that condition to ticks on the family pets. He prescribed a treatment shampoo. When the condition persisted, Su's notes indicate that he prescribed hydrocortisone cream, but the Board believed the patient when she testified that Su did not examine her scalp again and that she never got a prescription for the cream. The patient was continued on Melfiat and HCTZ.

4) The Board determined that Su conducted at least three (3) blood tests on the patient, but did not discuss the results of same with her.

5) The Board believed the testimony of Patient A and her husband to the effect that from February, 1989 through October, 1989 she made numerous complaints to Su about frequent urination and excessive thirst. Su attributed these conditions to the prescribed diuretic and did nothing further to evaluate the symptoms. The patient was continued on the pharmaceuticals. Thirst and urination are noted nowhere in Su's record for the patient.

6) The Board finds that as a result of her own efforts, the patient was admitted to the hospital on November 18, 1989, still complaining of excessive thirst and frequent urination as well as tiredness. She was diagnosed by hospital physicians as having diabetes Mellitus.

7) The Board accepted Dr. Kahn's testimony as to the fact that a supervised weight control program must include diet, exercise and counseling with the patient, and that pharmaceuticals should be used only as an adjunct. While Dr. Blackburn assumed that the patient was given a diet and exercise regimen, the patient testified that she was not given this program. Further, Su's patient record does not indicate that any diet, exercise or other counseling was given to the patient.

8) Based upon the testimony before the Board, the Board finds that Melfiat was prescribed excessively. It is the uncontroverted evidence on the record that Melfiat, if utilized at all, should be limited to a few weeks. Likewise, use of HCTZ and vitamin B-12 is

not medically justified as primary modes of reducing weight. The use of drug therapy without diet, exercise and counseling is medically unjustified and does not comport with standards of medical care for a weight loss program.

9) The Board also finds that the patient's complaints of excessive thirst, frequent urination and tiredness were largely ignored by Su, and that Su failed to recognize at an early stage of treatment that the patient's symptoms suggested evaluation for Diabetes Mellitus. Su never even ordered a urine test for the patient.

10) The Board finds that based upon the testimony and evidence, Dr. Su is guilty of unprofessional conduct in violation of Section 5-37-5.1 of the General Laws.

Based upon its findings and conclusions, the Board hereby

#### ORDERS

1) That Wu-Hsiung Su, M.D. be, and hereby is, suspended from the practice of medicine until such time as he can establish to the satisfaction of the Board that he has:

a) satisfactorily completed an educational course in metabolic and endocrine diseases that affect adults;

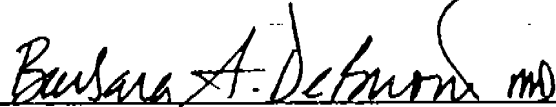
b) satisfactorily completed a course in medical records, including documentation of patient histories, symptoms and/or complaints and treatments undertaken.

c) satisfactorily completed a course in the management of obesity.

2) All of the remedial courses described above must have the prior approval of the Board of Medical Licensure and Discipline.

3) That Wu-Hsiung Su, M.D. be assessed an Administrative Fee of Five Thousand (\$5,000.00) Dollars payable within 60 Days of the date of this order.

ENTERED as an Order of the Board of Medical Licensure and Discipline for the State of Rhode Island this 30<sup>th</sup> day of September, 1994.

  
Barbara A. DeBuono, M.D., M.P.H.  
Director of Health

Barry Jasilli  
Barry Jasilli, Esq., Chairman

Mary B. Arnold  
Mary Arnold, M.D.

Sally Jane Thibodeau, Ph.D.  
Sally Jane Thibodeau, Ph.D.  
Public Member

Notice of Right of Appeal

In accordance with Rhode Island General Laws 5-37-7 1956, as amended, (re-enactment 1987), you have the right to appeal this decision to the Superior Court by serving the Director of Health with a complaint filed in the Superior Court within 30 days after the decision of the Director.

Certification

I hereby certify that on the 30th day of September a copy of this order was sent to the following attorneys at law:

Joseph Miller, Esq.  
1345 Warwick Avenue  
Warwick, RI 02888

J. Renn Olenn, Esq.  
Olenn & Penza  
530 Greenville Avenue  
Warwick, RI 02886

Wiliam Duan

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STATE OF RHODE ISLAND AND  
PROVIDENCE PLANTATIONS,  
DEPARTMENT OF HEALTH,  
BOARD OF MEDICAL LICENSURE  
AND DISCIPLINE

vs.

No. C90-063

WU-HSUING SU, M.D.

CONSENT ORDER

Pursuant to Section 5-37-5.2 of the General Laws, a complaint was filed with the Board of Medical Licensure and Discipline [hereinafter referred to as "Board"] charging Wu-Hsuing Su, M.D., Respondent, with violation of Section 5-37-5.1 of the General Laws. An investigation was conducted by Investigating Committee I of the Board.

After consideration by Investigating Committee I of the Board, the following constitutes the findings of fact with respect to the professional performance of the Respondent:

1. On or about November 18, 1982, a thirty three year old male patient was seen by Respondent for complaints of back pain.
2. Respondent prescribed Parafon Forte, advised the use of a warm pack and advised the patient to call his office in three to four days if the pain persisted.
3. The patient did not call Respondent's office, but rather presented himself at an emergency room at a local hospital on November 21, 1982. The patient was examined, X-rays were taken and the patient was advised to see his physician for follow up care. Patient did not contact Respondent.
4. On or about November 26, 1982, the patient once again presented himself to an emergency room at a local hospital for complaints of continued back pain, weakness in and inability to move his lower extremities and urinary retention. He was admitted to the hospital under the care of the Respondent.
5. Respondent examined the patient in the hospital on Friday November 26, 1982. Respondent's first impression was that the patient's spinal cord was compressed.

6. Respondent ordered a consultation from an orthopedic physician. The orthopedic physician did not see the patient until Monday November 29, 1982.

7. Respondent saw the patient over the weekend (November 27 and November 28, 1982) and noted that the patient failed to urinate and required a urinary catheterization. The patient also developed a fever.

8. The orthopedic physician saw the patient on Monday November 29, 1982. At this time a neurological consultation was ordered. The neurologist in turn obtained an emergency myelogram and neurosurgical consultation. The myelogram revealed a total blockage at the third lumbar disk space.

9. The patient underwent surgery on Tuesday November 30, 1982 for spinal cord compression.

10. The patient suffered permanent neurological damage.

11. Respondent failed to obtain a timely consultation.

12. Respondent failed to recognize the severity of the patient's medical problems.

The parties agree as follows:

1. Respondent is a physician licensed and doing business under and by virtue of the laws of the State of Rhode Island, allopathic license number 5116. Respondent's mailing address is 333 Budlong Road, Cranston, Rhode Island.

2. Respondent admits to the jurisdiction of the Board and hereby agrees to remain under the jurisdiction of the Board.

3. Respondent has read this Consent Order and understands that it is a proposal of Investigating Committee I of the Board and is subject to the final approval of the Board. This Consent Order is not binding on Respondent until final ratification by the Board.

4. Respondent hereby acknowledges and waives:

(a) The right to appear personally or by counsel or both before the Board;

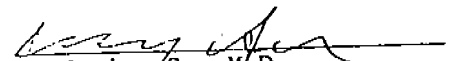
- (b) The right to produce witnesses and evidence in his behalf at a hearing;
  - (c) The right to cross-examine witnesses;
  - (d) The right to have subpoenas issued by the Board;
  - (e) The right to further procedural steps except for those specifically contained herein;
  - (f) Any and all rights of appeal of this Consent Order;
  - (g) Any objection to the fact that this Consent Order will be presented to the Board for consideration and review;
  - (h) Any objection to the fact that it will be necessary for the Board to become acquainted with all evidence pertaining to this matter in order to adequately review this Consent Order;
  - (i) Any objection to the fact that the Board reviewing this Consent Order may be the same as the Hearing Committee presiding over this matter should it later be brought to an administrative proceeding;
  - (j) Any objection to the fact that potential bias against the Respondent may occur as a result of the presentation of this Consent Order to the Board.
5. This Consent Order shall become part of the public record of this proceeding once it is accepted by all parties and accepted by the Board. It shall be published in a manner as the Board, in the exercise of its discretion, shall determine.
6. Acceptance of this Consent Order constitutes an admission by the Respondent of the facts set forth herein.
7. Failure to comply with this Consent Order, once signed and accepted, shall subject the Respondent to further disciplinary action.
8. Respondent voluntarily accepts the Board's sanction of a reprimand, as provided in Section 5-37-6.3 of the General Laws of the State of Rhode Island.

9. Respondent shall complete no less than 10 (ten) hours of academic classroom or clinical study in neurological evaluation at a school of medicine approved by the American Medical Association or a duly approved continuing medical education program. All courses or programs must be approved by the Board, in writing, prior to Respondent's enrollment. Proof of compliance, to the Board's satisfaction, shall be brought to the Board's attention within one (1) year of the date this Order is entered.

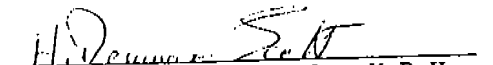
10. Respondent agrees to pay the sum of One Thousand Dollars (\$1,000) for the administrative cost of the proceedings instituted against Respondent, as provided for in Section 5-37-6.3 of the General Laws of the State of Rhode Island.

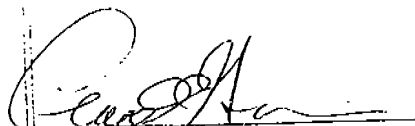
11. Respondent shall notify the Board, in writing, of any change in his address.

Signed this 2-4 day of \_\_\_\_\_ 1991

  
Wu-Hsuing Su, M.D.

Ratified by the Board of Medical Licensure and Discipline at a meeting held on February 13, 1991.

  
H. Denman Scott, M.D., M.P.H.  
Chairman  
Board of Medical Licensure and Discipline

  
LEONARD B. GREEN, M.P.S.

THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL

  
LAUREN DIXON  
NOTARY PUBLIC  
MY COMMISSION EXPIRES 30 JULY 1993